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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,332	08/08/2001	John Charles DeBraal	0011-0377P	1960

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,332

Applicant(s)

DEBRAAL ET AL.

Examiner

Christopher P Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 17-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10 and 17-22, drawn to an insulated beverage container and sleeve, classified in class 428, subclass 36.5.

II. Claims 11-16, drawn to a method of making an insulated beverage container and sleeve, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as adhering a polymer to the paper stock substrate followed by foaming the polymer, while it is already attached to the substrate.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Joe Muncy on January 2, 2003 a provisional election was made with traverse to prosecute the invention of an insulated beverage container and sleeve, claims 1-10 and 17-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

5. The disclosure is objected to because of the following informalities: On page 6, line 2 of paragraph 28, the container wall is referenced as 11, which also refers to the container space, the reference number should be changed to 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2, 7-10, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "said polyethylene foam layer" in line 3. There is insufficient antecedent basis for this limitation in the claim. There is a foam layer in claim 1, but the foam layer is not limited to a polyethylene foam layer.

Regarding claim 8, the claim is indefinite and vague because it is not understood if the container wall is another layer in the container or if the container wall comprises three

layers in which the paper stock layer is the outer layer and the polyethylene film layer is the inner layer and the foam layer is an intermediate layer. In light of the specification the container wall is not taken as a separate layer, but considered the combination of the three claimed layers.

Regarding claim 22, the claim is indefinite and vague because the layers are claimed in different positions within the same claim. Lines 1-4 and in light of the parent claims the sleeve comprises from inner layer to outer layer: a foam layer, an intermediate layer, and a paper stock layer. Lines 5-8 claims the sleeve comprises from outer layer to inner layer: a printing layer, a foam layer, and inside of those all the other layers. The claim in light of the rest of the claims and the specification is determined to define a sleeve comprising the layers as described in lines 1-4 and the paper stock layer is defined as the printing layer.

Claims 7 and 9-10 are rejected because the claims are dependent on claims that are rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 1-10 and 17-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Sadlier (USPN 6,085,970).

Sadlier anticipates an insulated beverage container stock material comprising a paper stock layer with a thickness between 8 and 24 mils and a foam layer disposed along an interior surface of the paper stock layer (col.9, 11.59-67). The foam layer is made of polyethylene, including high density, low density, or linear low density, or propylene (col.10, 11.1-4). A polyethylene film layer is provided on either surface of the paper stock layer to serve as both an adhesive and a waterproof coating (col.4, 11.58-63). Therefore polyethylene film layer is found between the foam layer and paper stock layer, which would sandwich the film layer between the foam layer and paper layer

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or on the innermost surface of the container, which would sandwich the foam layer between the film layer and paper layer. In another embodiment an insulating coating formed from a paperboard sheet is sandwiched between said foam layer and said paper stock layer, and numerous insulating sheets are used to increase insulation (col.9, 11.33-55). The foam layer is adhered by spraying, extruding or otherwise applying a foamed material to the blank (col.10, 11.25-29). A sleeve with the same layers and materials as described above is formed prior to heat-sealing the bottom blank to the sleeve to form the beverage container (col.7, 11.15-45). And the thickness of the paper stock material of the sleeve is between 8 mils and 24 mils as described above. The outside surface of the container or sleeve is a printing layer made up of either the paper stock layer or polyethylene film (col.12, 11.45-48).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Iioka (USPN 4,435,344).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440.

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The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

January 3, 2003




HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772
1/10/03